

REMARKS

Claims 18-21

Applicant has without prejudice cancelled claims 18-21 in this final office action response, and requests that the Examiner enter this cancellation, as it puts the present patent application in better placement for appeal, should an appeal prove necessary.

Claim rejections under 35 USC 102

Claims 1-21 have been rejected under 35 USC 102(e) as being anticipated by Cypher (2004/0002992). Applicant traverses this rejection. Applicant respectfully submits that the Examiner has inconsistently interpreted Cypher to reach a conclusion that Cypher anticipates the claimed invention. In particular, Applicant believes that the Examiner has employed two contradictory interpretations of Cypher. Applicant submits that, by comparison, consistently interpreting Cypher compels the conclusion of non-anticipation. Insofar as anticipation requires that a single reference must disclose every element of a claim, arranged as in the claimed, Lindermann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 221 USPQ 481, 485 (Fed. Cir. 1984), and of course as logic itself dictates, anticipation of the claimed invention has to be shown in view of a consistent reading of Cypher. Otherwise, Cypher is not able to disclose each element of the claimed invention arranged as in the claim. Applicant thus now discusses in detail each of the Examiner's interpretations proffered in the final office action, to show how consistently reading Cypher in view of either approach results in Cypher not anticipating the claimed invention.

Interpretation where node of Cypher corresponds to node of claimed invention

The Examiner's first interpretation of Cypher suggests that Cypher's nodes are being corresponded to the claimed invention's nodes. For example, on page 2, paragraph 3, of the final office action, the Examiner seemingly equates Cypher's nodes to the claimed invention's nodes. However, under this interpretation, Cypher cannot result in anticipation of the claimed invention.

In particular, it is noted that all of the claims are directed to transmission of a cache miss to *a sub-plurality of nodes* greater than one in number. However, Cypher never discloses transmission of a cache miss to a sub-plurality of nodes greater than one in number. Rather, Cypher discloses transmission of a cache miss to, at best, *clients* within the same node (singular). For example, except for paragraphs [0077] and [0078], which discuss a multiple-node system, the entirety of Cypher is directed to a *single* node in which cache misses are transmitted among *clients* of this single node. Paragraph [0028], for instance, notes that a computer system 140 may be referred to as a node 140, where the term "node" refers to a group of clients sharing common address and data networks, and where subsystems 142, 144, and 146 are considered clients.

Thus, the description in paragraphs [0034]-[0046] of Cypher that the Examiner relies upon as teaching transmission of a cache miss to a sub-plurality of nodes greater than one in number, as well as all other paragraphs relating to cache miss transmission, are in fact particular to transmission of a cache miss *within a single node*, among the *clients* of this node. See, e.g., paras. [0034], [0038], [0039], and [0046]. As such, according to this interpretation of Cypher, where Cypher's nodes correspond to the invention's nodes, Cypher does not anticipate the claimed invention, because its cache misses are not transmitted to a sub-plurality of nodes greater than one in number, but rather are transmitted to clients within the same, single node.¹

¹ Applicant notes that the only mention of multiple nodes within Cypher, in paragraphs [0077] and [0078] thereof, is completely silent as to cache misses within the scalable shared memory (SSM) within the node, such that these paragraphs in view of the other teachings of Cypher do not serve as a basis upon which to conclude that Cypher anticipates the claimed invention.

Interpretation where client of Cypher corresponds to node of claimed invention

The Examiner's second interpretation of Cypher suggests that Cypher's clients are being corresponded to the claimed invention's nodes. For example, on page 8, paragraph 4, of the final office action, the Examiner seemingly equates Cypher's clients to the claimed invention's nodes. However, under this interpretation of Cypher as well, Cypher cannot result in anticipation of the claimed invention.

In particular, it is noted that all of the claims encompass either logic *within each node* that determines to which sub-plurality of nodes to transmit a cache miss (see, e.g., independent claims 1 and 17), or a method in which *a node* determines to which sub-plurality of nodes to transmit a cache miss (see, e.g., independent claims 9, 15, and 16). However, Cypher's clients do not contain the logic that determines to which clients a cache miss is transmitted, where, as has been noted above, subsystems 142, 144, and 146 of the node 140 are considered the clients of this node 140. Rather, this logic is contained within a switch 200, as part of the address network 150 of the node 140, which is separate from any of the subsystems/clients 142, 144, and 146. (See, e.g., FIGs. 1 and 2A, and paras. [0036] and [0039].) As such, it is the switch 200/address network 150 in Cypher that determines to which clients a cache miss is transmitted, not the clients themselves as in the claimed invention, where Cypher's clients are equated to the invention's nodes. (See, e.g., para. [0039], in which determining to which clients a cache miss is transmitted "is controlled not by the client . . . but by the address network.")

As such, according to this consistent interpretation of Cypher, where Cypher's clients correspond to the claimed invention's nodes, Cypher does not anticipate the claimed invention, because its logic does not reside within Cypher's clients (i.e., the claimed invention's nodes), such

that determining where to transmit a cache miss is not determined by Cypher's clients (i.e., the claimed invention's nodes).²

² Applicant parenthetically notes that the only way that Cypher can anticipate the claimed invention is if you interpret Cypher one way to read on some of the limitations of the claimed invention and interpret Cypher in another, contradictory way to read on other limitations of the claimed invention. However, such an interpretative approach means that Cypher does not recite all the limitations of the claimed invention, arranged as in the claim. As a simple example, claim 1 is limited to logic within each node to determine whether a cache miss should be transmitted to a sub-plurality of nodes lesser in number than the plurality of nodes but greater than one. In order to disclose this element, Cypher's *nodes* have to be interpreted as the nodes of the claimed invention as to the first recitation of node in this element (or otherwise the logic does not reside within a node in Cypher, if a client of Cypher instead corresponds to a node of the claimed invention), and Cypher's *clients* have to be interpreted as the nodes of the claimed invention as to the other recitations of nodes in this element (or otherwise the cache miss is not transmitted to a sub-plurality of nodes lesser in number than the plurality of nodes but greater than one, if a node of Cypher instead corresponds to a node of the claimed invention). It strains credulity that one of ordinary skill within the art, without the benefit of the claimed invention in front of him or her, would engage in such a contradictory interpretation of Cypher. That is, either Cypher's nodes are the claimed invention's nodes, or Cypher's clients are the claimed invention's node – not both in different parts of each claim, “picked and chosen” so that Cypher's teachings can be distorted to read on the claimed invention.

Conclusion

Applicants have made a diligent effort to place the pending claims in condition for allowance, and request that they so be allowed. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Mike Dryja, Applicant's representative, at 425-427-5094, so that such issues may be resolved as expeditiously as possible. For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,



Michael A. Dryja, Reg. No. 39,662
Attorney/Agent for Applicant(s)

April 21, 2007
Date

Law Offices of Michael Dryja
704 228th Ave NE #694
Sammamish, WA 98074
tel: 425-427-5094
fax: 206-374-2819